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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,157	03/19/2004	Yoshihiro Murano	018995-743	7420

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EXAMINER	
HOFFER, SUSANNA MARIE	

ART UNIT	PAPER NUMBER
4133	

NOTIFICATION DATE	DELIVERY MODE
10/19/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/804,157	MURANO ET AL.	
	Examiner	Art Unit	
	Susanna Hoffer	4133	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 August 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-23* is/are pending in the application.

4a) Of the above claim(s) *11 and 20-23* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-10 and 12-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☒ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *See Continuation Sheet*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :30 Sept 2005, 20 Feb 2007, 13 July 2007, 19 Mar 2004.

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Group I, claims 1-10 and 12-19, in the reply filed on August 21, 2007 is acknowledged. Claims 11, 20, and 21-23 are withdrawn.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear whether the fish meal, soybean meal, or a mixture thereof is included in the Markush group of claim 1. One cannot determine if claim 19 is claiming a method or a composition.

Claim 8 recites the limitation "the water-containing alcohol." There is insufficient antecedent basis for this limitation in the claim. Claim 8 was viewed as being dependent on claim 7 in the rejections below.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 9, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Uchino et al. (JP 10-265328).

The claims are drawn to a feed comprising pentacyclic triterpenes and fishmeal and/or soybean meal, wherein the pentacyclic triterpene is maslinic acid or ursolic acid. The feed further comprises at least one member selected from the group consisting of antioxidants, organic acids, salts thereof, phosphoric acid and salts thereof. The antioxidant is selected from the group consisting of vitamin C, vitamin E and isoflavone. Claim 3 is drawn to the feed of claim 1 wherein the pentacyclic triterpene is present in the form of a defatted product derived from olive plants. Claims 4-8 include a product-by-process. Claims 15-19 are drawn to a melanin production-inhibitory agent and a blackening/browning-inhibitory composition.

Uchino et al. teach a pet food comprising a pentacyclic triterpene, soybeans, and vitamin E (claims 3 and 4; para. 46). The pentacylic triterpene can be ursolic acid (claim 4).

Claim 12 is rejected under 35 U.S.C. 102(e) as being anticipated by Glinski et al. (US 2001/0018459).

The claims are drawn to a fertilizer comprising pentacyclic triterpenes, a melanin production-inhibitory agent, and a blackening/browning-inhibitory composition.

Glinski et al. teach that pentacyclic triterpenes can be used as an effective component in fertilizer (abstract; p. 7, claim 2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 3-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Uchino et al. (JP 10-265328) in view of Lopez de Hierro (US 6,037,492).

Uchino et al., discussed above, do not teach that pentacyclic triterpenes are defatted products derived from olive plants.

Lopez de Hierro teaches a process for obtaining maslinic acid from the residues of whole olives or parts thereof by adding a water insoluble organic solvent and then a more polar solvent (col. 5, lines 10-28). Hexane can be used first, followed by methanol (col. 6, lines 3-9). This process would result in a defatted product.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use these products extracted from olives or olive parts in the invention taught by Uchino et al. because these products can be extracted through a process that yields products of purities higher than 80% (Lopez de Hierro, abstract). The adjustment of particular conventional working conditions (e.g., determining a result effective alcohol content in the water-containing alcohol beneficially taught by the cited reference, especially within the broad ranges instantly claimed) is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the ordinary artisan.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Glinski et al. (US 2001/0018459) in view of Lopez de Hierro (US 6,037,492).

Glinski et al., discussed above, do not teach the use of a product derived from olives.

Lopez de Hierro, also discussed above, teaches that pentacylic triterpenes can be derived from olives (abstract).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use these products extracted from olives or olive parts in the

invention taught by Uchino et al. because these products can be extracted through a process that yields products of purities higher than 80% (Lopez de Hierro, abstract).

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Glinkski et al. (US 2001/0018459) in view of Takagi et al. (US 4,571,256).

Glinski et al. (as taught above) does not teach a fertilizer comprising oil meal and a mineral mixture.

Takagi et al. teach a fertilizer comprising oil cake (oil meal) and minerals (col. 4, lines 6-22).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine these references because both teach beneficial ingredients for the manufacture of fertilizer. One would have been motivated to use pentacyclic triterpenes because Glinski et al. teach that they are effective as a fungicide and one would have used oil meal and minerals because they are effective as fertilizers. Combining these two references would have resulted in a fertilizer with antifungal properties.

Claims 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Uchino et al. (JP 10-265328) and Glinski et al. (US 2001/0018459) in view of Lopez de Hierro (US 6,037,492).

Uchino et al., discussed above, teach the use of pentacyclic triterpenes in animal food.

Uchino et al. does not teach that pentacyclic triterpenes can be administered to plants or that pentacyclic triterpenes can be derived from olives.

Glinski et al., discussed above, teach the use of pentacyclic triterpenes in fertilizer.

Lopez de Hierro, also discussed above, teaches that pentacylic triterpenes can be derived from olives (abstract).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use these products extracted from olives or olive parts in the invention taught by Uchino et al. because these products can be extracted through a process that yields products of purities higher than 80% (Lopez de Hierro, abstract). These products can also be used for plants because Glinski et al. teaches the use of pentacyclic triterpenes in fertilizer.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Obagi et al. (US 5,166,176), and Suzuki et al. (US 5,314,877).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susanna Hoffer whose telephone number is (571)272-9345. The examiner can normally be reached on Monday - Friday, 9:00 a.m.-5:00 p.m., EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Stucker can be reached on (571)272-0911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SMH

JEFFREY STUCKER
SUPERVISORY PATENT EXAMINER